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With This Ring, I Thee Control: Legal Constructions of Feminine Identity in *Bleak House* and
The Fellowship of the Ring

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An Honors Thesis
Submitted for partial fulfillment of the requirements
for graduation with honors in Legal Studies
from Hamline University
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INTRODUCTION

In 1974, women were granted the right to obtain their own credit cards. In 1993, marital rape was considered a human rights violation. In 2010, women were able to file claims for pay discrimination. In each instance, critique and commentary, regarding women's rights, demanded change in legislation. As law attempted to regulate society, society pushed back and demanded fair treatment for all individuals. Anxiety and social commentary surrounding legal rights of women began far before the 1970s. *Bleak House*¹ and *The Fellowship of the Ring*² are two texts that are embedded in moments of legal change and cultural anxiety regarding gender roles and relations. Despite breaks in genre, both works of epic fiction share a common thread: men sought to actively exclude women, through construction of identity and control of action.

Bleak House offers a range of instances of feminine character development and Dickens engages in a dialogue that questions the roles of women in the Victorian era. Echoing themes of Dickens' work, *The Fellowship of the Ring* raises issues regarding the control of women and their actions. In order to understand the issues that each text engages, it is imperative to view each text through a lens of New Historicism, a critical approach that examines how an author's work and his cultural and historical contexts shaped each other. Dickens' text explicitly draws from the legal field, while Tolkien's fantastic text does not overtly engage with the law. Charles Dickens' *Bleak House* (1853) and J.R.R. Tolkien's *The Fellowship of the Ring* (1937) can be read against British legal texts of the same periods to examine how female character and identity were constructed and controlled regarding their interactions with the public and private spheres.

¹ CHARLES DICKENS, *BLEAK HOUSE* (Norton Critical ed., W.W. Norton & Co. 1977) (1853).

² J.R.R. TOLKIEN, *THE FELLOWSHIP OF THE RING* (Houghton Mifflin Co. 1994) (1954).

Through examining literary representations of women's roles, each text can be better understood in both the legal and cultural contexts.

An approach of New Historicism is imperative to understanding cultural implications behind both *Bleak House* and *The Fellowship of the Ring*. Without society there is no law, and without law there is no society. New Historicism enforces the belief that cultural and, in this case, legal perspectives must be viewed as parallels in order to fully understand each text. It is important to note ways in which the public and private realms interact to construct gender identities and norms of both 1853 and 1937. In both periods, British society publically regulated a woman's identity and attempted to restrict women to the private realm. Constructs of female gender identity were rigidly set in place by legislation of 1853 and 1937, a dynamic reflected in both Dickens' more explicit literary satire of legal institutions and Tolkien's subtle, fantastic interpretation of legal contexts. Law surrounding breach of promise and the Act of the Better Prevention and Punishment of Aggravated Assaults on Women and Children affected women of Dickens' time. In addition, several feminine activists, such as Caroline Norton, spoke out to gain greater rights for Victorian women. In regard to Tolkien's work, the Matrimonial Causes Act of 1937³ and the development of negligence as a tort influenced his drafting of *The Fellowship of the Ring*.

In Victorian England, society created an ideology based upon gender and societal placement, which was constructed and maintained particularly in the middle classes. Men were to be actors of the public sphere and "the sphere of woman's happiest and most beneficial

³ Matrimonial Causes Act, 1937, 1 Edw. 8 & 1 Geo. 6, c. 57, § 13.

influence [was the] domestic one.”⁴ In that way, the household, much like society, remained in good, patriarchal order. Charles Dickens’ *Bleak House* is a Victorian novel that clearly represents the construction of the separate spheres and their influence upon daily life. While the law attempts to aid private citizens, it also plays a key role in refusing mobility for women beyond the private sphere.

Separate spheres ideology centered on the Victorian ideal of “household.” A selfless male represented the face of this ideal and his was the only presence permitted in the public sphere. This ideal aligns itself with Victorian laws surrounding coverture. Under laws of coverture, a woman, as well as her possessions, were absorbed by her male counterpart.⁵ From a legal perspective, both man and woman were viewed as one legal entity, specifically identifying as the male counterpart. In regard to the private realm, the workings of a successful household were attributed to the work of a submissive and dutiful female within the private home. The sanctity of the private home depended upon its separation from the corrupting influence of the public sphere. It was the duty of a man to submit himself to the harsh realities of the public sphere, in order to protect his feminine counterpart. Through his duty, a man guards the woman from the public sphere; “within his house, as ruled by her, unless she herself has sought it, need enter no danger, no temptation, no cause of error or offense.”⁶ Society was believed to thrive when separate spheres were upheld; women were actively excluded from the public sphere, and men held control over the private sphere.

⁴ SARAH S. ELLIS, *THE WOMEN OF ENGLAND: THEIR SOCIAL DUTIES, AND DOMESTIC HABITS* 1 (Fisher, Son, and Co. 1839).

⁵ LISA SURRIDGE, *BLEAK HOUSES MARITAL VIOLENCE IN VICTORIAN FICTION* 88 (Ohio UP 2005).

⁶ JOHN RUSKIN, *Sesame and Lilies*. Lecture II. –Lilies: Of Queens’ Gardens (Dec. 14, 1864).

Within *Bleak House*, the line of separation between public law and private society has been violated. The entirety of Dickens' novel is constructed around an event that permeates the public sphere and consequently penetrates the private sphere: the legal case of Jarndyce and Jarndyce. The basis of the case surrounds a will that has been held up in Chancery for many years. This legal quagmire affects all characters of Dickens' novel and in addition, links much of the plot. Chancery, which is a male dominated system, is in full control of the private lives that characters lead. Rather than maintaining a separation between spheres, the public Jarndyce and Jarndyce case dominates the workings of the private realm.

Throughout his text, Dickens demonstrates ways in which men dominate the public sphere and restrict women to the private sphere through all components of the marriage cycle: breach of promise, coverture, property, divorce, and wills. In addition to critiquing the public, legal influence upon these stages of marriage, Dickens also suggests the tensions that such a collapsing of separate spheres produces as a marriage progresses. When boundaries between spheres become fluid, Dickens points out instances in which those spheres fail to positively interact and in turn, fail to provide for individuals in those respective spheres. Despite the dominant Victorian gender ideology that dictated the separation of public and private spheres and the confinement of women and their concerns to the private realm, a woman's identity was publically regulated and thus cannot be viewed as private. More than a social norm, the constructs of female gender identity were rigidly set in place by then current legislation, a dynamic reflected in *Bleak House*, Dickens' literary satire of legal institutions.

The ideology of separate spheres carried over into Tolkien's work, as well. In all class systems, men within *The Fellowship of the Ring* take on roles of action and adventure, while women are left behind to safely maintain the household. This separation of public and private

action is far reaching, as it affects elves, hobbits, dwarves, and wizards. When separate spheres are maintained, Middle Earth seems to avoid chaos and conflict. As Frodo, Tolkien's feminized character, ventures beyond his private home, discord ensues.

While Tolkien's Middle Earth does not maintain a structured system of law, men are expected to mitigate conflicts and uphold justice in the public sphere. When feminized characters are introduced to the public sphere, a collapse of separate spheres occurs, and society cannot function properly. This ideal echoes the sentiments of those opposed to change in 1937 England, when women began to enter the legal sphere in order to claim additional rights under marriage laws. Tolkien engages his text with laws of 1937 that surround negligence, divorce, and property.

Tensions are raised in *Bleak House* and *The Fellowship of the Ring* regarding mutual expectations and collaboration between spheres. Rather than reinforcing the strengths of the other, in the world of each novel, each sphere attempts to strive apart from the other. On one hand, the power of the public sphere does not extend far enough to aid private individuals, but on the other hand, legal rights are extended too far into the private realm, so that individuals wrongly are able to dictate the actions of other persons. In the end, these tensions immobilize each sphere and sufficient aid is provided for few.

Regulation of female characters within *Bleak House* and *The Fellowship of the Ring* is exemplified through comparing their situations with those of women counterparts and legal regulations of their time. An approach of New Historicism depicts ways in which feminine interaction with the law in the novels mirror the reality of each author's time. Calling upon legal statutes, case law, and social commentary of Dickens' and Tolkien's respective eras, a link of representation and critique can be made between *Bleak House*, *The Fellowship of the Ring*, and

English marital and property laws of the 1853 and 1937. Specific instances of each text identify the complex relationship between literature and the law, as well as aid in an understanding of the holistic relationship between law and society.

**I. CONSTRUCTION OF FEMININE IDENTITY THROUGH CHARLES DICKENS'
*BLEAK HOUSE***

A: BREACH OF PROMISE

As Dickens wrote *Bleak House*, breach of promise was the initial area in which the law governed and purported to protect a woman through the marriage process. According to this law, “a promise of marriage is in the nature of a contract, of which, if there be any breach or non-performance, the law provides a remedy”⁷. Even before a contract of marriage is signed, both man and woman are to be held accountable by law. Once the parties reach a verbal or written agreement that a marriage will occur a legal relationship is formed as well. Breach of promise holds the purpose:

to recover compensation for a personal wrong, which may probably be irreparable, to obtain damages, perhaps, for loss of health, or loss of happiness,...or loss of hitherto unimpeachable honor (that full measure of a woman’s ruin), and, sometimes, in addition to all these, loss of property in the disappointment of a settlement for life.⁸

In simpler terms, if one party is expecting to gain something from the intended marriage, and those expectations are not met, then legal action can be taken in order to restore that party to full restitution.

Even contemporary readers are made aware of this legality, as it is transmitted through Dickens’ text. Mr. Guppy’s proposal to Esther exemplifies Dickens’ use of *Bleak House* as a legal satire. Esther’s insistence upon refusing Guppy is so frequent that it reaches a level that is almost comical. In addition, Guppy’s use of legal jargon mocks this amorous event when he proposes to Esther by stating, “Would you be so kind as to allow me (as I may say) to file a

⁷ SASKIA LETTMAIER, *BROKEN ENGAGEMENTS THE ACTION FOR BREACH OF PROMISE OF MARRIAGE AND THE FEMININE IDEAL, 1800-1940* 19 (Oxford UP 2010).

⁸ *Id.*

declaration—to make an offer!”⁹ His proposal takes all of the romance out of this private event, which in turn, locates marriage squarely in the public, legal realm. Both Esther and Guppy seem to be fighting the common legal ideal, known as breach of promise, which was prominent during their time; Esther rejects the concept, while Guppy accepts and fears the law. By engaging the breach of promise situation between Esther and Guppy as a satire, Dickens challenges the authority of English law to govern personal, domestic relations in the 1850’s.

Esther could find support for her possible breach of promise through a contemporary legal case. As noted in *Wild v. Harris* (U.K.)¹⁰, power is granted to a woman, such as Esther, if breach of promise is deemed valid. With enough legal standing, she can bring a breach of promise suit against a man. In the plaintiff’s argument, Wild noted that both she and the defendant, Harris, had agreed to marry. In consideration of this promise, Wild would remain “unmarried and...ready and willing to marry [Harris]” for a reasonable amount of time.¹¹ At this point, both Wild and Harris had entered into a verbal agreement, or contract. Harris failed to uphold his portion of the contract on two accounts: First, Harris never married Wild; second, at the time the agreement was made, Harris was presently married. Harris’ failure to uphold his portion of the spoken contract gave legal standing to Wild, and therefore, she was able to make a successful breach of promise claim. The court held that “although the plaintiff was never bound by her promise to marry the defendant [due to his present marriage]...her promise involved a further promise that she would remain single for a reasonable time.”¹² Therefore, this further

⁹ DICKENS, *supra* n. 1, at 113.

¹⁰ *Wild v. Harris*, [1849] 7 C. B. 999, 137 Eng. Reprint. 395, 7 Dowl. & L. 114. 18. L. J. C. P. N. S. 297, 13 Jur. 961.

¹¹ GEORGE FREDRICK LESLIE BRIDGMAN & LAURENCE ADRIAN WHITFIELD, *The All England law reports reprint* 413 (Butterworth 1843-1860).

¹² *Id.*

promise, on behalf of Wild, “constituted as sufficient consideration to entitle her to sue on the contract and recover [£10] for its breach.”¹³

The *Wild v. Harris* (U.K.)¹⁴ case allows Victorian women, like Esther, to acknowledge ways in which they can gain legal mobility and restitution for unmet expectations of marriage. In Esther’s case, her legal standing comes from her potential “loss of property.”¹⁵ The proposal of marriage from Guppy to Esther is based on the material objects that Guppy could offer to Esther. This is a legal mistake on Guppy’s part, because Esther is then fully informed regarding the damages that she could claim if she decided to bring a breach of promise suit against Guppy. At that point, Esther’s lost property could include “two pound a week, . . . a small life annuity, . . . and lodgings at Penton Place.”¹⁶

In *Bleak House*, Guppy is quite aware that upon his proposal of marriage, Esther has the ability to bring a breach of promise suit against him. He prefaces his proposal by asking Esther if their following interactions should go without “prejudice.”¹⁷ When Esther doesn’t understand what Guppy is talking about, his explanation of breach of promise informs her that:

[She] won’t make any use of [their conversation] to [Guppy’s] detriment, at Kenge and Carboy’s or elsewhere. If [their] conversation shouldn’t lead to anything, [Guppy is] to be as [he] was, and [is] not to be prejudiced in [his] situation or worldly prospects. In short, it’s in total confidence.¹⁸

¹³ *Id.*

¹⁴ *Wild v. Harris*, *supra* n. 10.

¹⁵ LETTMAIER, *supra* note 4.

¹⁶ DICKENS, *supra* n. 1, at 113.

¹⁷ DICKENS, *id.*

¹⁸ *Id.*

Through this conversation, Guppy is asking that no breach of promise suit be invoked on Esther's behalf. His request for confidence reflects a desire that their interaction be considered private—a sign that legally, it is not.

When Guppy brings up a proposal for a second time in the presence of Mr. Jarndyce, Esther's legal guardian rejects Guppy for her. As before, Guppy approaches the proposal as he would a legal contract, inquiring about the "acceptance, or rejection, or consideration" upon Esther's behalf.¹⁹ Witnesses were present at this scene, including Mr. Guppy's mother and Jobling, a friend of Guppy. Witnesses were able to hear Esther's rejection of Guppy's proposal; therefore, Guppy's breach of promise claim lacks admissibility in court.

Esther also attempts to defend herself from the legalities of a breach of promise suit. Once Guppy makes his initial proposal, Esther is quick to state that she "cannot consent to hear another word."²⁰ She continues to refuse his proposal by begging him to conclude his plea. Guppy leaves the situation by again restating that their conversation "has been without prejudice."²¹ Dickens provides Esther with additional power in the public realm when he allows her to have the final say regarding her interactions with Guppy. Esther agrees that the conversation should not lead to a breach of promise suit, but warns that she has the power to act against him if "[Guppy] should give [her] future occasion to do so."²²

When Dickens creates a satire around breach of promise, he questions the role that the law plays within this area of the private realm and offers some recourse to women of the Victorian era. Through allowing women to obtain additional power through the law, Dickens

¹⁹ *Id.* at 756.

²⁰ *Id.* at 113.

²¹ *Id.* at 115.

²² *Id.*

challenges the ideal that women should not have redress beyond the private realm. Breach of promise provides accessibility for women to bring their private relations into the public realm, but only if the male dominated, public sphere deems their legal standing valid. The loss of what should be private, romance surrounding engagement, satirizes the intrusion of the public sphere into personal relations. In this case, the power of the legal system extends too far into the private realm, which creates tensions between private intention and private action. Guppy may have intended to display his affection for Esther through a romantic engagement, but his background in the legal system influenced his decision to approach this situation from a point of view that was focused on breach of promise. This public approach to a private issue fails to find success. By injecting humor into this cycle, and removing all romance from the situation, Dickens questions the authority and construction of breach of promise suits, and in turn, questions the role of English law.

B. MARRIAGE CONTRACTS AND THE EFFECTS OF COVERTURE

If neither man nor woman has invoked a breach of promise suit, the relationship is likely to develop into its next legal form: marriage. Both public and private authority is invoked in the formation of a marriage contract. Religion, the original marriage jurisdiction, is considered to be a personal belief; yet, the overriding hierarchy of the specific religion publically regulates it. According to Lord Hardwicke's Marriage Act (1754), a marriage was only to be considered valid if the "ceremony [were to] take place in some parish church, or public chapel."²³ It was not until 1836 when Lord John Russell's Act was passed that marriage could be seen as valid within the eyes of the law, as well as the church. This way, individuals had the ability to be "married

²³ CAROLINE S. NORTON, A LETTER TO THE QUEEN ON LORD CHANCELLOR CRANWORTH'S MARRIAGE AND DIVORCE BILL 8 (Longman, Brown, Green, and Longmans 1855).

according to any form they choose.”²⁴ Dickens shows readers an example of a Victorian marriage that combines both roles of authority: religion and law. Esther “happened to stroll into the little [private] church when a marriage was just concluded and the young couple had to sign the [public] register.”²⁵ Changes made, regarding the process required to obtain a marriage license, raise tensions surrounding the public and private dimensions of this personal commitment.

Expectations regarding marriage, and which sphere should regulate these expectations, caused confusion. Regarding the marriage process, this shift in authority raised “a question agitated by lawyers, whether marriage was not a religious contract, requiring the sanction of the church. That question [had] been settled by the Legislature, and marriage [was then] a Civil Contract.”²⁶ Once the civil contract is formed, laws regarding coverture take effect. Coverture ensures that “a married woman in England has no legal existence: her being is absorbed in that of her husband.”²⁷ Further, upon marriage, an English wife has no right to property, as “her property is [her husband’s] property...[she] has no legal right even to her clothes or ornaments...even though they be the gifts of relatives or friends, or bought before marriage.”²⁸ In addition to restrictions placed upon property rights, women were also prohibited from drafting wills, claiming their own earnings, deserting their husbands, avoiding physical abuse, and signing leases or other contracts.

²⁴ *Id.*

²⁵ DICKENS, *supra* n. 1, at 447.

²⁶ NORTON, *supra* n. 23.

²⁷ *Id.* at 3.

²⁸ *Id.*

Once a contract of marriage is signed, the overriding power of coverture confines a woman to the private realm. Coverture dissolves all legal rights of a woman, as:

A man and wife are one person in law; the wife loses all her rights as a single woman, and her existence is entirely absorbed in that of her husband. He is civilly responsible for her acts; she lives under his protection or cover, and her condition is called coverture. A woman's body belongs to her husband; she is in his custody and he can enforce his right by a writ of habeas corpus.²⁹

One of Dickens' most explicit legal examples, beyond the overriding case of Jarndyce and Jarndyce, is that of coverture. Allan Woodcourt finds a brick maker's wife in the street with "a bad bruise, and [her] skin sadly broken."³⁰ Woodcourt is willing to help her, but he cannot legally do so. The extent of his aid is shown through minor medical aid after he confirms that "[he] is a doctor" and the brick maker's wife "[need not] be afraid."³¹ Woodcourt's aid stops here, and he cannot confront the husband, because under the laws of coverture a wife is bound to her husband as one. Further, a woman is unable to sue her husband, because she has become her husband and it is impossible for a man to bring a legal suit upon himself. The most that she can do is file for divorce, but "if the wife sue for separation for cruelty, it must be "cruelty that endangers life or limb."³² This means that, despite her physically abusive husband, the bruised woman is unable to receive legal aid against her transgressor. Through this example, Dickens demonstrates that the law intervenes in private relations when it shouldn't, but also fails to

²⁹ SURRIDGE, *supra* n. 5.

³⁰ DICKENS, *supra* n. 1, at 554.

³¹ *Id.*

³² NORTON, *supra* n. 23, at 3.

protect women, because it will not interfere with husbands' private rights. Dickens challenges the role and power of English law, through creating this double standard.

An article written in the *Morning Chronicle* reiterates and challenges a woman's lack of power under the laws of coverture. Eliza Lynn, the first salaried female journalist, wrote the article in 1856. After solidifying the fact that a woman loses all authority once she is governed under laws of coverture, Lynn makes a claim that women have no more power in their relationship than does a dog to his owner. For a Victorian woman, her legal authority "is simply as a sentient animal not as a wife, nor as a citizeness, that she can claim the protection of the laws."³³

In *Bleak House*, the bruised woman shares similarities to a dog, both in her legal rights under coverture, as well as in her stature and situation. Much like a dog, the woman is sitting on a doorstep when Woodcourt approaches her. The comparison continues, as Woodcourt asks, "Can't you make them hear? Do you want to be let in?"³⁴ At the time that this serial of *Bleak House* was published, developments in legislation regarding animal protection had taken the forefront of public concern, rather than protection of women against spousal violence. Introduced in 1853, the Act of the Better Prevention and Punishment of Aggravated Assaults on Women and Children sought to level the playing field. An advocate for women's rights, Mr. Fitzroy, introduced this bill to the House of Commons, arguing that "the same protection [should be extended] to defenseless women as they already extended to poodle dogs and donkeys" which

³³ SURRIDGE, *supra* n. 5.

³⁴ DICKENS, *supra* n. 1, at 554.

was granted through the Cruelty to Animals Act of 1835.³⁵ In the Act of the Better Prevention and Punishment of Aggravated Assaults on Women and Children, the preamble noted that laws in place were deemed insufficient for the protection of women and children from violent assaults.³⁶ At this point, portions of coverture law were recognized by some as being ineffective, if not unjust.

Private assistance, stemming from Woodcourt's good intentions, along with public regulation, represented through English law, display the failure of the interaction between spheres to provide assistance to private individuals, such as the wives of brick makers. Mrs. Pardiggle, a philanthropist who is in constant interaction with the public sphere, enters the home of Jenny and the brick maker with a "business-like and systematic" approach, which makes her "intrusive and out of place" in the private realm.³⁷ On the other hand, Esther and Ada, who are restricted to the private realm, use their quiet sympathy to make them welcome within the private lives of the brick maker's home. Jenny "gazed [upon Ada] in astonishment," while Esther can do little, other than cover the dead child with her own handkerchief. This example, which accompanies Woodcourt's assistance to the battered woman, displays the fact that private interventions cannot make up for public institutions and laws that, without providing any genuine aid, intrude upon private lives. Laws enter into and govern private life in ways that are unwanted, not unlike Mrs. Pardiggle, but then these same laws do not extend far enough to provide the genuine assistance that private individuals, like Woodcourt, cannot make up for. Further, private

³⁵ SURRIDGE, *supra* n. 5, at 89. The Cruelty to Animals Act of 1835 provided legislation that provided greater protection for domestic animals, created shelters for animals in need, established veterinary hospitals, and set forth more humane transportation and slaughter regulations.

³⁶ *Id.*

³⁷ DICKENS, *supra* n.1, at 88-89.

individuals are prevented from aiding others by laws that appear to protect the sanctity of the private sphere by not intervening between a husband and his property, or his wife.

English courts upheld this restriction in 1848 through *Wilson v. Wilson*, when they concluded that “it is better that spouses enter into a private agreement to live apart than bring their differences before the courts.”³⁸ A woman’s identity is subject to the identity of her husband and public laws of coverture ensure that this remains the case. By depicting the brick maker’s wife’s impossible situation under the law, Dickens reinforces the fact that the separate spheres ideology expressed a desire to limit females to the private realm, but relied on laws that undid the separation of spheres without giving women the possibility of legal aid. He provides no remedy for the situation through his text, but rather, Dickens uses *Bleak House* as a vehicle to draw attention to the failing law of coverture, and in turn, criticizes the role of the English legal system.

C. WOMEN AND PROPERTY UNDER THE LAW

Stemming from issues of coverture, property is another marital area that affects the identity of a woman. “Between 1850 and 1900 many novelists,” including Dickens, “emphasized the issue of property ownership by presenting property plots based on the destabilization of gender roles resulting from shifts in economic power.”³⁹ Along with shifts in gender and economic power, the destabilizing effect of public control within the private realm is a main focus of Dickens’ text. In regard to property, the dynamic that Dickens’ sets in place between Lady Dedlock and Mr. Tulkinghorn asks readers to examine the influence of public control

³⁸ L.G. JORY, *THE ENCYCLOPAEDIA OF FORMS AND PRECEDENTS OTHER THAN COURT FORMS*: 4th ed. 912 (Butterworths, 1969).

³⁹ DEBORAH WYNNE, *WOMEN AND PERSONAL PROPERTY IN THE VICTORIAN NOVEL* 17 (Ashgate Publ’g 2010).

within the private realm. This instance is Dickens' most dramatic representation of tensions between spheres. Tulkinghorn, as an actor of the public, legal realm, is permitted to obtain complete knowledge and control over all areas of the private household of Lady Dedlock and Sir Leicester. Both Lady Dedlock and Sir Leicester, actors of the private sphere, are under the impression that resolution of their private marital conflicts can only be reached through legal mediation by Mr. Tulkinghorn. In the end, Tulkinghorn fails to assist Lady Dedlock and Sir Leicester and failure results for both the public and private spheres.

A woman of Dickens' time examined this influence of public control by questioning the lack of legal standing that women held. Caroline Norton (1808-1877) was a feminist and social reformer, as well as an author. As a British wife, Norton was subject to regular physical abuse and the inability to receive dissolution of marriage. "Her campaign to ensure women were supported after divorce included an eloquent letter to Queen Victoria, which was published. Caroline's efforts were influential in the passing of the Marriage and Divorce Act of 1857."⁴⁰ In her "Letter to the Queen"⁴¹ (1855) regarding marriage and divorce bills, Norton, noted:

instead of [her] having any respect for these laws, they must of necessity, to [her], appear simply ridiculous. In vain would those who desire to see them maintained, affect to sneer down my efforts to expose their absurdity, by affirming that this is a "private quarrel," which out to be kept private. It is not in the private quarrel they are invited to interfere,

⁴⁰ *Caroline Norton*, BBC News (Dec. 14, 2012), http://www.bbc.co.uk/history/historic_figures/norton_caroline.shtml.

⁴¹ NORTON, *supra* n. 23.

but in the state of the English law. That can hardly be called a private quarrel, which began in a public prosecution.⁴²

Throughout Norton's letter, she raises tensions that are present between public control and private action. This claim is significant to Dickens' text, because Lady Dedlock, along with the rest of the private sphere, feels that women are best protected through conforming to the demands of the public sphere. Lady Dedlock follows the demands of Tulkinghorn because she is ingrained with the belief that the public sphere is the final answer, or the best option, for continued existence. The public sphere maintains power over the private sphere, even though Lady Dedlock and Sir Leicester could have resolved their marital dispute in a private and successful manner, without the interference of Mr. Tulkinghorn. Unlike Lady Dedlock, Norton is able to distinguish between ideals that are forced upon her and the reality of spherical interactions.

The tensions displayed in *Bleak House*, between Lady Dedlock and Mr. Tulkinghorn bring failed interaction of the public and private spheres to the forefront. Tulkinghorn acts as Sir Leicester's legal advisor, and the representative of the public sphere. As a part of his public duty, Tulkinghorn is to manage all of the property that is considered to be within Sir Leicester's estate. Tulkinghorn reminds Lady Dedlock that she, along with her actions, belong to the estate of Sir Leicester. Lady Dedlock is made aware that "[Sir Leicester's] reliance upon [her] is implicit;...the fall of [the] moon out of the sky, would not amaze him more than [her] fall from [her] high position as [Sir Leicester's] wife."⁴³ Under the laws of coverture, and confirmed by Tulkinghorn, all that Lady Dedlock owns, including her thoughts and actions, is part of the estate

⁴² *Id.* at 38.

⁴³ DICKENS, *supra*. n. 1, at 511.

of Sir Leicester. Lady Dedlock believes that she has tarnished the image of Sir Leicester, which is considered a part of his estate, and this ultimately kills her. Through this dramatic series of events surrounding property laws, Dickens challenges the public role of the legal system that regulates occurrences in the private realm of the home.

Tulkinghorn, the public actor, insistently reminds Lady Dedlock of her role within the private and public spheres, because he is aware of her illegitimate child, Esther. He is worried that if this information is revealed to the public, then Sir Leicester's estate will be ruined. Lady Dedlock is also under the impression that "whether she preserved her secret until death, or it came to be discovered and she brought dishonour and disgrace upon the name she had taken, it was her solitary struggle always."⁴⁴

The lack of uniform regulation from the public realm produced tensions in the public sphere, the private sphere, and the ways in which spheres interact with one another. Unlike Tulkinghorn's insistence to keep Lady Dedlock's illegitimate child hidden from both spheres, the law of Dickens' time sometimes acted to extend its aid to individuals like Lady Dedlock. In the case of *R. v. Collingwood and Another*, Mary Ann Rance had delivered a bastard child while married to George Rance. By section two of the Poor Law Amendment Act, 1844...a "single woman" who had been delivered of a bastard child might apply to a justice for a summons to be served on the man alleged by her to be the father of the child."⁴⁵ The question in this case is whether Rance was to be considered a single woman, as "the language of section two of [the Poor Law Amendment Act] applies in terms only to single women," as did the language of the

⁴⁴ *Id.* at 450.

⁴⁵ BRIDGMAN & WHITFIELD, *supra* n. 11, at 551.

Bastard Children Act, 1733.⁴⁶ The court ruled in Rance's favor, holding that a married woman may bring an order against the assumed father of her bastard child (to receive financial aid to support the child), as she is to be considered single for the purposes of her circumstance. The courts were adamant to hold their decision, as they found importance in "reach[ing] a very large proportion of illegitimate children," rather than maintaining public appearances.⁴⁷

Despite the legal assistance that is in place for Lady Dedlock, coverture has ensured that as a married woman, she no longer has a separate legal existence, and as a result, cannot benefit from the laws that protect women left with illegitimate children. In this instance, Lady Dedlock chose a private solution rather than legal action to rectify her situation. Without ability to exercise her legal rights, Lady Dedlock assumes that her disappearance will be a relief in light of her illegitimate child surfacing. As she prepares to flee, Lady Dedlock makes sure to leave behind all property that may belong to Sir Leicester. Even though they were gifts or purchases of her own, Lady Dedlock leaves "[her] jewels...in their proper places of keeping. They will be found there. So, [her] dresses. So, all the valuables [she] has."⁴⁸ At this point, Lady Dedlock chooses to focus "particularly on [her] attachment to personal portable property, those 'feminine' things, including domestic objects, ornaments, jewellery, and dress, which the majority of husbands [including Sir Leicester] were disinclined to appropriate (or perhaps too embarrassed to do so."⁴⁹

Contrary to what Mr. Tulkinghorn believes, Sir Leicester mentions no harm to his estate in regard to Lady Dedlock's actions. In fact, he wishes that she be found and returned with "full

⁴⁶ *Id.* at 552.

⁴⁷ *Id.*

⁴⁸ DICKENS, *supra* n. 1, at 509.

⁴⁹ WYNNE, *supra* n. 39, at 15.

forgiveness” upon Sir Leicester’s behalf. Mr. Tulkinghorn, as a representative of the public sphere, corrupts and prevents the healing forgiveness of the private affection. Accordingly, Lady Dedlock and Sir Leicester fail to entertain the idea of making use of a private conversation to remedy their private quarrel. Instead, they employ Tulkinghorn to solve their private problems with his public influence and legal knowledge. As a result, the overriding force of the public realm, Mr. Tulkinghorn, has wrongly displaced Lady Dedlock from her private life and has also left no room for her in the public sphere. Rather than maintaining power over Lady Dedlock’s portable possessions, Sir Leicester places a greater concern upon having Lady Dedlock in his possession, and ultimately represents a legal system that is concerned with ownership of women rather than creation of balanced partnerships. He has hired Mr. Bucket to “follow [Lady Dedlock] and find her.”⁵⁰ If private matters, such as marital disagreements, were left to the discretion of the private realm, Lady Dedlock and Sir Leicester could have reached an effective civil compromise without the interference of the legal system.

In the end, the private realm’s inability to reach its own resolution leads Lady Dedlock to “die of terror and [her] conscience.”⁵¹ Tulkinghorn leads Lady Dedlock to believe that her actions are inexcusable under the law. This scrutiny pressures Lady Dedlock to believe that she was deserving of capital punishment. Lady Dedlock’s assumption contradicts legal precedent of her time. From 1837 until 1861, 350 individuals faced capital punishment for their crimes. Of these 350 people, 345 were executed for the crime of murder and five were executed for the crime of attempted murder. Through his example, Dickens exemplifies that “the relationship between property, power and identity became subject to scrutiny in the Victorian period with the

⁵⁰ DICKENS, *supra* n. 1, at 672.

⁵¹ *Id.* at 710.

1850s debates on the reform of the marriage laws.”⁵² Her fear and obligation stemming from the public sphere drove her to abandon the stake that she had in the private realm. Dickens scrutinizes standards set forth by public actors when he shows a representative of the law driving Lady Dedlock to the most extreme of situations. In the end, the public sphere, which set standards for marriage and property laws, dictated Lady Dedlock’s life, and death, in the private sphere.

Through this example regarding women and property, Dickens suggests that tensions ensue from the public, legal sphere’s failure to extend its aid in a correct manner. On one hand, the power of the public sphere does not extend far enough to aid battered women, but on the other hand, legal rights that aim to protect husband’s interests, are extended too far into the private realm, so that individuals, such as Tulkinghorn are able to wrongly dictate the actions of other individuals. In the end, this tension of power leads to a failure in both realms, providing aid for no individual.

D. DIVORCE

Tensions related to feminine interaction with property and women as property carry over into another area of the marriage cycle: divorce. Much like laws of property, divorce is another area of the law in which public power extends either too far, or not far enough, into the private realm to provide aid for women. The benefits of divorce law were reserved solely for men of the Victorian era. If a man is to apply for dissolution of marriage, his wife is not “allowed to defend

⁵² WYNNE, *supra* n. 39.

herself. She has no means of proving the falsehood of his allegations. She is not represented by an attorney, nor permitted to be considered a party to the suit between him and her.”⁵³

Women were restricted to the private realm upon contract of marriage and they were not able to remove themselves from this position unless their husbands made that decision for them. “If an English wife be guilty of infidelity, her husband can divorce her so as to marry again; but she cannot divorce the husband [from a bond of marriage], however profligate he may be.”⁵⁴ In addition, courts of England did not have the ability to grant instances of divorce; rather an Act of Parliament to annul the marriage was passed on a case-by-case basis. “The House of Lords grants this almost as a matter of course to the husband, but not to the wife.”⁵⁵ At the time, only four instances, two being cases of incest, allowed a woman to obtain divorce to remarry. As soon as news about Lady Dedlock’s pre-marital relationship with Nemo begins to surface, the public begins to discuss “all the principal circumstances that will come out before the Lords, on Sir Leicester’s application for a bill of divorce.”⁵⁶ This is an example of ways in which a husband is able to receive dissolution from marriage, even if the wife made no acts against him during the scope of their social unity.

During the time that Dickens wrote *Bleak House*, reform was occurring within the marriage realm, which included petitions for dissolution of marriage, or divorce. While Dickens does not present his readers with an explicit example of a divorce suit, he does create a satire surrounding socially acceptable forms of remarriage. Specifically, Dickens uses the dynamic of Mrs. Badger’s multiple husbands and Mr. Badger’s approval of her promiscuous marriage track

⁵³ NORTON, *supra* n. 23, at 3.

⁵⁴ *Id.* at 4.

⁵⁵ *Id.*

⁵⁶ DICKENS, *supra* n. 1, at 690.

record to make a mockery of societal norms surrounding marriage law. Through Dickens' satire, male and female roles regarding control within the marriage realm are undermined and therefore a challenge is brought against English law of the 1850's.

In Dickens' text, the Badgers present an alternative to traditional norms regarding remarriage. Mrs. Badger has been married multiple times and Mr. Badger is her third husband. However, this is not looked down upon by anyone. In fact, "[Mr. Badger] admired [Mrs. Badger] exceedingly, but principally, and to begin with, on the curious ground (as it seemed to us) of her having had three husbands."⁵⁷ Dickens satirizes a relationship in which the husband derives his social importance from the men who previously gave his wife her social identity. In addition, the Badgers are not quick to clarify that Mrs. Badger has been remarried on behalf of death rather than divorce. Mr. Badger continues to commend his wife in that "Mrs. Bayham Badger has not the appearance...of a lady who has had two former husbands."⁵⁸

Readers can find this fact absurd, that a woman in Dickens' text is congratulated for her multiple marriages, while society around them denounces anything other than a wife being fully devoted to her singular husband, or master. In this instance, Mrs. Badger gains her identity from her former relationships, rather than her current husband. She is able to reap all of the desired marriage benefits from the public sphere, but she is also able to privately regulate her own identity. This goes against the ideal that a woman of Dickens' time was granted with no social mobility to change her marriage situation once the contract was signed. Other characters in Dickens' novel are agitated by the relationship of the Badgers, yet it is one of the most functional marriages present in the text. Through creating a mockery of the legal system through his

⁵⁷ *Id.* at 156.

⁵⁸ *Id.*

depiction of the Badgers' relationship, Dickens is challenging the ideal that women are unable to create their own identity separate from the identity of their current connection to the public sphere, their husband. This counteracts the cultured norm of coverture, in which a woman's identity stems from her singular, male counterpart.

E. WILLS

Extending beyond divorce, and even beyond death, the male dominated public sphere, remained in control of a woman's actions in either sphere. An English wife did not have the ability to create a will. Further, "she may have children or kindered whom she may earnestly desire to benefit;—she may be separated from her husband...no matter: the law gives what she has to him, and no will she could make would be valid."⁵⁹ It is left to the male counterpart to arrange for the future and this continuous male domination creates a cycle that excludes women from workings of the public sphere. Property and power is handed down from man to man, leaving women entirely excluded from the cycle that passes legalities between the public and private spheres.

This failing legal concept is reinforced through Dickens' text when Richard absorbs and squanders all of Ada's fortune upon contract of marriage. If Ada had inherited from the Jarndyce and Jarndyce case, all that she was granted would have been Richard's property under legal contexts. The public sphere did not take into account the responsibility of each party or whom the money rightfully belonged to. The only factors that were taken into account were those of gender and power. If Ada had been allowed full access to her potential fortune, she would have been able to manage her inheritance as to support her self and her child after Richard's death. In

⁵⁹ NORTON, *supra* n. 23, at 3.

this instance, Dickens displays the fact that male access to the public sphere does not correspond to correct and responsible action within the public and private spheres.

In the situation of Richard and Ada, tensions are created when the legal system extends too far into the private realm, as to provide Richard with ultimate financial control. On the other hand, legal assistance does not extend far enough into the private realm to provide Ada with sufficient control over her own property, so that she can plan for the future and manage her funds. As a result, the private sphere struggles to survive, while the public sphere falls short in fulfilling its intended duties.

II. CONTROL OF FEMININE IDENTITY IN *THE FELLOWSHIP OF THE RING*

Through a fantastic lens, *The Fellowship of the Ring* is also constructed upon a spherical model. Within Tolkien's world of Middle Earth, there are two spheres. One is a male dominated sphere of action and battle. The other sphere serves to protect the women who were left behind. Some overlap exists between the spheres, but the majority of Tolkien's storyline revolves around the male dominated sphere of action. In addition, Tolkien's Middle Earth places greater importance upon the control of woman, rather than the construction of feminine identity.

The year of 1937 took literary development in England by storm. J.R.R. Tolkien published *The Hobbit*, and began work on his next novel, *The Fellowship of the Ring*. At the same time, England's legal sphere was adopting literature, as well. Laws and statutes were introduced and commentary was applied to these changing legalities through discourse created by law reviews and developing statutes. Though seemingly different, these two forms of literature share one trait in common: they both exert legal elements. The Matrimonial Causes Act of 1937 began to take effect and consequently, "applications for the dissolution of marriage, [or divorce], had risen more than tenfold" in comparison to the beginning of the century.⁶⁰ Concerns regarding a need to maintain control over the private, feminized realm were a reality for both legal concepts and literary texts.

Prior to 1937, as seen through Dickens' novel, a woman had little say regarding the rights and powers in which her male counterpart held over her marital status. It was much easier for a man to obtain a petition for divorce, as he only needed to meet one standard in the matter. A man was required to prove that his wife had committed an act of adultery, and his petition was

⁶⁰ CHRISTOPHER W. BROOKS, *LAWYERS, LITIGATION, AND ENGLISH SOCIETY SINCE 1450* 117 (Hambleton 1998).

granted. To maintain a successful petition for divorce, a woman needed to prove that her husband committed adultery, as well as an additional offense, either cruelty or desertion.

The role of the legal sphere was altered in 1937, as “fresh grounds for divorce” were set for women through the Matrimonial Causes Act of 1937.⁶¹ These new grounds not only included adultery, but also took into consideration offenses of desertion, cruelty, unsound mind, and death. The new conditions presented in 1937 were in order to provide “true support of marriage, the protection of children, [and] the removal of hardship...”⁶² As well as providing personal well-being, the Matrimonial Causes Act of 1937 gave more legal authority to women across England.

A shift in legal authority suggests that the ultimate form of power comes through the law. Any dispute or wrongdoing can be solved through the law. Two parties are able to bring their claim before a judge or jury and, after the verdict is conveyed, the matter has reached its ultimate conclusion. Authority through the public, legal realm is the final say in any private matter. This fact is significant, as through the Matrimonial Causes Act of 1937, men, and the public sphere as a whole, experienced a loss of legal power, and ultimately, a loss in authority.

Domestic relations were not the only area of law that underwent revision. A text dedicated to the discussion of torts, or wrongful acts upon the rights of others, also acknowledges a need to revise previous legislation. Published in 1937, the preface states that “it was time to engage upon a more thorough revision” of present laws.⁶³ Further support is found in a text lending discussion to divorce law claims, stating “sweeping changes have been made in [the

⁶¹ WILLIAM LATEY, *LATEY’S LAW AND PRACTICE IN DIVORCE AND MATRIMONIAL CAUSES* 62 (Sweet & Maxwell 1940).

⁶² *Id.*

⁶³ JOHN FREDERIC CLERK & WILLIAM HARRY BARBER LINDSELL, *CLERK & LINDSELL ON THE LAW OF TORTS III* (Sweet & Maxwell 1937).

divorce] branch of law by the Matrimonial Causes Act, 1937.”⁶⁴ A legal text regarding contract law also underwent change during the year of 1937. The preface of this particular text states, “the whole work has been subjected to drastic revision.”⁶⁵ This change in public legislation leads the reader to believe that in regard to a need stemming from the private sphere of England, a cause to create new laws and statutes transpired. Aligning with areas of developing English law, Tolkien raises many of the same legal issues throughout *The Fellowship of the Ring*. Specifically, Tolkien’s text refers to issues regarding contracts, domestic relations, and torts.

A. CONTRACTS

The first legal concept present in Tolkien’s work, regards contracts. Through development in this area of law, men of Tolkien’s time were able to better understand the publically regulated contracts that they had entered through marriage.

The first mention of a budding contract occurs when Frodo states, “[he] really wish[es] to destroy [the Ring]” as “[he] shall like to save the shire.”⁶⁶ Frodo’s expression to Gandalf bears resemblance to a simple contract under English law. A simple contract is present when an engagement is entered into between two parties. The contract is in consideration of something done, or that is to be done, by one party. A simple contract can occur by word of mouth, or in writing. Frodo enters his simple contract with Gandalf by word of mouth. Sam acts as a witness to the mutual assent by both parties, Frodo and Gandalf, regarding the contract, when Frodo tells him “I shall have to go [to destroy the Ring].”⁶⁷ Another component that leads to a valid contract

⁶⁴ LATEY, *supra* n. 61, at iii.

⁶⁵ JOSEPH CHITTY & CHARLES EDWIN ODGERS, CHITTY’S TREATISE ON THE LAW OF CONTRACTS IV (Sweet and Maxwell 1937).

⁶⁶ TOLKIEN, *supra* n. 2, at 60-61.

⁶⁷ *Id.* at 62.

is that of consideration. The consideration is the service to which both parties presume. In Tolkien's case, the consideration is that Frodo will remove the Ring from the Shire and attempt to destroy it in the Cracks of Doom. In the like of a woman of 1937, Frodo is required to maintain the stipulations of his contract, until law terminates such agreement.

Frodo may claim argument that as his proposed acts to destroy the Ring were considered voluntary service, and that no contract stands. This is not the case, as according to *Coggs v. Bernard*⁶⁸, voluntary service constitutes as a legal contract. One party "entrusting the bailee with the goods [is] sufficient consideration to oblige him to a careful management" of the contract.⁶⁹ Either way, Frodo has entered into a legal contract.

In Tolkien's text, Frodo, along with the other hobbits, is often viewed as one of the most feminized characters. Throughout his entire life, Frodo has been restricted to the private realm of the shire, much like that of a woman. He avoids a life of duty, and prefers tasks of cooking and cleaning to those of action and adventure. When feminized characters are secluded within the private realm, Middle Earth appears to function without conflict. As soon as Frodo is determined to enter the public realm, in order to destroy the Ring, chaos ensues and the remainder of Tolkien's text depicts violence and quarrel.

In addition, all characters that are assigned to help Frodo carry out his portion of the contract are male. Through his text, Tolkien has suggested that men are the rightful actors to mitigate conflict and uphold justice within the public sphere. Once feminized characters are introduced to the public realm, the sense of separate spheres begins to collapse, and proper functions of society cannot occur. The separation of spheres within Tolkien's text reinforces the belief of 1937, in which women were to remain quietly content within the private sphere.

⁶⁸ *Coggs v. Bernard* 92 Eng. Rep. 107 (K.B. 1703).

⁶⁹ CHITTY & ODGERS, *supra* n. 65, at iv.

B. PROPERTY AND POSSESSION

In addition to general contract principles, *The Fellowship of the Ring* also highlights the developing legal concept of “possession” in marriage. Similar to the situation in *Bleak House*, issues of possession affect marital relationships and can often complicate situations surrounding divorce. In Tolkien’s text, ambiguity is present regarding who the true possessor of the Ring is. The word “possession” is vague. Further, its surface meaning does not exactly coincide with either of its two legal meanings. A being “is said to possess, or be in possession of, anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others.”⁷⁰ For instance, the reader is in possession of the paper that they hold in their hands, but the true owner, and author, is entitled to the possession of it.

The legal definition of possession can be broken down into two components: *de facto*, or actual possession, and possession in law. *De facto* possession can be linked to the individual who is in physical control on an object. The character that physically holds the Ring is said to have *de facto* possession over it. Possession in law can occur under a few circumstances. First, one party can have *de facto* possession over an object, while no one else can gain possession without consent. Second, an individual can have *de facto* possession, while intending to exclude all others from that possession, even if others may have the right regarding possession of the object. Third, one can have possession in law of an object upon the owner’s consent. Finally, one can have “legal possession in any of the cases above mentioned and has lost the thing, or has ceased to exercise any effective control, and no other person has acquired *de facto* possession.”⁷¹

⁷⁰ LOUIS ARTHUR GOODEVE & DAVID THOMAS OLIVER, GOODEVE’S MODERN LAW OF PERSONAL PROPERTY 14 (Sweet & Maxwell 1930).

⁷¹ *Id.* at 16.

In the beginning of Tolkien's text, Sauron the Great has *de facto* and possession in law over the Ring, as "he made [the] Ring himself."⁷² Overthrown by Isildur, Sauron's *de facto* possession of the Ring is transferred. "The finder or person who takes [the Ring] has the right to possess against others...but the true owner retains his right to possess against everybody, including the *de facto* possessor."⁷³ Following legal concepts of possession, Sauron still remains in control of the possession in law over the Ring. After Isildur suffers loss of *de facto* possession of the Ring to the river, Déagol becomes the finder, and possessor *de facto* of the Ring. Sméagol executes Déagol and takes the Ring for himself. Essentially, the Ring should have then been the *de facto* possession of Déagol's father, as "the father of a legitimate infant child has the right to control its actions" and possessions.⁷⁴ Aligning with Isildur's actions, Sméagol stole the Ring from Déagol's father, and therefore he maintains the right to *de facto* possession. Through Bilbo's first encounter with Sméagol, a riddle game was played and Bilbo was determined the winner. As his reward, Sméagol was to give the Ring to Bilbo. Unknown to Sméagol, Bilbo had previously found the Ring, and acquired its *de facto* possession, "and as he had won the game, it was already his by right."⁷⁵ At Bilbo's departure from the Shire, he deposited a will for his friends and family. Frodo was gifted the Ring and, through acceptance, he gained *de facto* possession over the object. Through accepting both items of property, Frodo gained *de facto* possession over the Ring. As rights of possession stand in *The Fellowship of the Ring*, Sauron the Great maintains possession in law over the Ring and Frodo is granted *de facto* possession. Both parties assume their role to be legally bound to the risks and consequences associated with the Ring.

⁷² TOLKIEN, *supra* n. 2, at 50.

⁷³ GOODEVE & OLIVER, *supra* n. 70, at 17.

⁷⁴ *Id.* at 453.

⁷⁵ TOLKIEN, *supra* n. 2, at 12.

Sauron's possession over the Ring may be questioned, as the statute of limitations regarding his stolen property had already run. The statute of limitations is the period of time in which an action must be brought for it to be considered valid in a court of law. "As to debts on simple contract and torts, it provides that all actions [regarding]...taking away of goods...shall be commenced and sued...within six years."⁷⁶ Sauron missed his statute of limitations by a few hundred years, and his claim for possession over the Ring may no longer stand in the eyes of a jury.

Tolkien's mention of elements of possession link to divorce claims of 1937. When a two parties legally end their marriage, household and personal belongings must be split up. One party might decided to take *de facto* ownership over the house, even though the opposing party was the original builder, and possessor in law, of that structure. The developing possession statutes of 1937 were able to spell out exactly which party was able to maintain ownership over specific items.⁷⁷

⁷⁶ GOODEVE & OLIVER, *supra* n. 70, at 415.

⁷⁷ During the same period that Tolkien drafted *The Fellowship of the Ring*, negligence was also being recognized as an independent tort. Frodo's actions regarding the Ring can be examined against the 1937 standards of negligence. English law of 1937 encompassed three standards of proof regarding negligence: i) nature of care; (ii) duty; and (iii) damage. Nature of care compares the actions of the defendant to those of any sane and sensible being positioned in a similar situation. If the defendant's actions align with those of the sensible being, then no violation regarding subdivision (i) of negligence is met. Through venturing past the boundaries of the Shire, Frodo acted above and beyond that of a reasonable hobbit. Subdivision (ii) maintains that duty is an action that is necessary, due to a moral or legal obligation. It is an obligation to which an individual is bound. *The Fellowship of the Ring* must show that circumstances gave rise to the obligation that Frodo had to abandon the Shire, carrying with him intentions to destroy the Ring. Duty is established at the moment that the defendant is consciously aware of his or her obligation. Through the description of the One Ring, relayed to Frodo via Gandalf, Frodo's duty begins to form. In addition, Frodo makes a personal acknowledgement that he is a danger to the shire while in possession of the Ring. Violation of subdivision (ii) is present, as Frodo knows of the danger that his possession holds and he is aware that the only way to destroy the Ring is by casting it into the Cracks of Doom. Subdivision (iii), damage, includes any injury or harm, which impairs an individual. Further, the damage in question must be a direct result of the duty required

CONCLUSION

In both Dickens' and Tolkien's novels, a woman remains powerless and the male dominated public sphere dictates the actions through which she is able to construct her identity. In Dickens' text, readers become aware that the public sphere fails to provide collective aid to its citizens and in the end, mobility is provided for no one. *Bleak House*, as a legal satire, attempts to question these power roles and suggest ways in which law of Victorian English should be challenged.

In the course of *Bleak House*, Dickens brings light to the idea that women can challenge their roles within each sphere. Resulting from this challenge, Dickens goes as far to suggest that women, not the legal realm, should be the ones to maintain their identity. This allowance ensures the continuance of separate spheres, but urges that a more mutually beneficial harmony be present between the two spheres. Overall, this proposed balance in gender regulation would benefit not only women of England, but also the workings of the English society as a whole.

Extending beyond the construction that occurs within Dickens' text, Tolkien places a greater focus upon the control of feminine identity. The Matrimonial Causes Act of 1937⁷⁸ destabilized power structures present within both the public and the private spheres, ultimately leading to a stronger voice allotted for women. For the male dominated public sphere, questions of law became questions of society, and questions of society became questions of law. Tolkien's work represents as symptomatic result of the interactions between law and society.

by the defendant. In Frodo's case, a shortened life span of the inhabitants of the Shire is sufficient damage, and subdivision (iii) would be violated. Only two of the three elements (ii and iii) can be proven, and therefore hobbits of the Shire will not be able to produce a successful claim against Frodo.

⁷⁸ Matrimonial Causes Act, *supra* n. 3.

Both Dickens and Tolkien provide accurate representation for their era. Whether legal or fantastic, *Bleak House* and *The Fellowship of the Ring* acted as a vehicle to question norms and ideals that society had set in place. Each author was able to merely represent women, or exclude women from their text all together, in order to spark debate. Through applying a lens of New Historicism to each text, a deeper understanding of the literary and legal contexts results. When law and society holistically interact, each area can become a more effective tool for society.

Even beyond their publication date, both Tolkien and Dickens are successful in initiating dialogue through their texts. *Bleak House* and *The Fellowship of the Ring* have been profitably transformed into film adaptations, but story lines, as well as roles of women, have been adapted in current representations. These texts remain relevant, and provide for discussion regarding their affect upon current society.

Women have the ability to rewrite history, as well as the future, regardless of the sphere in which they originate. This change can only ensue through engaging in a social dialogue surrounding legal norms and regulations that affect women. As society finds itself in a current state of cultural anxiety surrounding gender roles and marriage regulation, now is the time for women to break beyond barriers that refuse self-regulation of their own identities.